1235

SUPREME COURT OF THE UNITED STATES.

No. 179.

JEREMIAH W. BLYDENBURGH AND JULIANA BLYDENBURGH, PLAINTIFFS IN ERROR,

vs.

HENRY AND DAVID COTHEAL.

IN ERROR TO THE COURT OF ERRORS AND APPEALS OF THE STATE OF NEW JERSEY.

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J. & G. S. Gideon, printers.

In chancery, New Jersey.

HENRY COTHEAL and al., complainants,
vs.
JEREMIAH W. BLYDENBURGH and UX. and al., defendants.

Bill, filed October 11, 1842.

E. WOOD, *Solicitor.*

To his excellency, William Pennington, esquire, governor and chancellor of the State of New Jersey:

Humbly complaining, shew unto your excellency your orators, Henry Cotheal and David Cotheal, of the city and State of New York, that, on or about the eighth day of November, in the year of our Lord one thousand eight hundred and thirty-six, they being seized of a certain tract or parcel of ground or land, hereinafter particularly described, did, on the day and year aforesaid, by deed duly executed and acknowledged, convey the same, for a valuable consideration, to Jeremiah W. Blydenburgh, then of the city and State of New York aforesaid.

And your orators further shew, that the said Jeremiah W. Blydenburgh, being indebted to your orators in the sum of five thousand dollars, part of the purchase money of the premises so as aforesaid conveyed to him, did, at the city of New York, in the State of New York aforesaid, execute and deliver unto your orators a certain bond or writing obligatory, bearing date on the said eighth day of November, in the year aforesaid, in the penal sum of ten thousand dollars, lawful money of the United States of America, conditioned for the payment by the said Jeremiah W. Blydenburgh, his heirs, executors, or administrators, unto your orators, their executors, administrators, or assigns, the just and full sum of five thousand dollars, at the counting room of your orators, number forty-nine, Water street, in the city of New York, on or before the eighth day of November, in the year one thousand eight hundred and thirty-seven, with interest for the same at and after the rate of seven per centum per annum, payable semi-annually at the said *county*-house of your orators, number forty-nine (49), Water street, in said city of New York, as in and by the said bond or writing obligatory, now in the possession of your orators, and ready to be produced as this honorable court shall direct, and to which, for greater certainty, your orators pray leave to refer, may more fully appear.

And your orators further shew unto your excellency, that the said Jeremiah W. Blydenburgh, in order to secure the payment of the said principal sum of five thousand dollars, mentioned in the condition of the said bond or writing obligatory, and the interest thereof, in manner aforesaid, did, in and by a certain indenture of mortgage, bearing date on the said eighth day of November, in the year of our Lord one thousand eight hundred and thirty-six, after reciting that whereas the said

Jeremiah W. Blydenburgh was justly indebted to your orators in the sum of five thousand dollars, lawful money of the United States of America, secured to be paid by his certain bond or obligation, bearing even date with said indenture of mortgage, in the penal sum of ten thousand dollars, lawful money as aforesaid, conditioned for the payment of the said first mentioned sum of five thousand dollars at the counting-room of your orators, number forty-nine (49), Water street, in the city of New York, on or before the eighth day of November, which would be in the year one thousand eight hundred and thirty-seven, with interest for the same at and after the rate of seven per centum per annum, payable semi-annually at the said counting room, number forty-nine (49), Water street, in said city of New York, as by the said bond or obligation, and the condition thereof, reference being thereunto had, might more fully appear; then the said indenture witnessed, that the said Jeremiah W. Blydenburgh, for the better securing the payment of the said sum of money mentioned in the condition of the said bond or obligation, with interest thereon, according to the true intent and meaning thereof, and also for and in consideration of the sum of one dollar to him, the said Jeremiah W. Blydenburgh, in hand paid by your orators, at or before the ensealing and delivery of the said indenture of mortgage, the receipt whereof was thereby acknowledged, [doth] grant, bargain, sell, alien, release, convey, and confirm, unto your orators, and to their heirs and assigns, forever, all that certain tract or parcel of ground or land, commonly known as the Lazarus Wilmurt tract, situate, lying, and being in the township of South Amboy, county of Middlesex, State of New Jersey: Beginning at the edge of the Amboy bay, where the line of General James Morgan, late of the township of South Amboy, county and State aforesaid, deceased, touches the same; thence, along the aforesaid line, south sixty-three degrees and thirty minutes west, fifty chains fifty-two links, to a stake; thence, north twenty-seven degrees and thirty minutes west, twenty-eight chains and forty links, to a stake; thence, north sixty-five degrees east, thirty-two chains and ninety-four links, to the aforesaid bay shore; thence, down the same, the several courses thereof, to the place of beginning; (saving and excepting, out of the said tract above described, the small lot, piece, or parcel of ground said now, or lately, to belong to Peter Johnson, being about three acres, more or less, and situate upon and near the northwesterly corner of the said tract of land above described,) the said tract of land hereby conveyed, or intended to be conveyed, (after saving and reserving thereout the small lot aforesaid,) containing one hundred and six acres, be the same more or less. The said premises above described being the same which were conveyed to the said Jeremiah W. Blydenburgh by the said Henry Cotheal and *their* David Cotheal, and their respective wives, in and by a deed bearing even date with the said indenture of mortgage. Together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging, or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof, and also all the estate, right, title,

interest, property, possession, claim, and demand whatsoever, as well in law and in equity, of the said Jeremiah W. Blydenburgh, of, in, and to the same, and every part and parcel thereof, with the appurtenances.

To have and to hold the said granted, bargained, and described premises, with the appurtenances, unto your orators, their heirs, and assigns, to their own proper use, benefit, and behoof, forever. Provided always, and the said indenture of mortgage was given upon this express condition, that, if the said Jeremiah W. Blydenburgh, his heirs, executors, or administrators, did and should well and truly pay unto your orators, their executors, administrators, or assigns, the said sum of money mentioned in the condition of the said bond or obligation, and the interest thereon, at the time and in the manner mentioned in the said condition, according to the true intent and meaning thereof, that then the said indenture of mortgage, and the estate thereby granted, should cease, determine, and be null and void. And the said Jeremiah W. Blydenburgh for himself, his heirs, executors, and administrators, did, by the said indenture of mortgage, further covenant and agree to pay to your orators, their executors, administrators, and assigns, the said sum of money and interest, as therein before mentioned and expressed in the condition of the bond therein recited; and if default should be made in the payment of the said sum of money, or the interest that might grow due thereon, or of any part thereof, that then, and from thenceforth, it might be lawful for your orators, their executors, administrators, and assigns, to enter into and upon all and singular the premises by the said indenture granted, or intended so to be, and to sell and dispose of the same, and all benefit and equity of redemption of the said Jeremiah W. Blydenburgh, his heirs, executors, administrators, or assigns, therein, at public auction, according to the act of the legislature of the State of New York, in such case made and provided; and as the attorney of the said Jeremiah W. Blydenburgh for that purpose, by said indenture duly authorized, constituted, and appointed, to make and deliver to the purchaser or purchasers thereof a good and sufficient deed, or deeds, of conveyance in the law for the same in fee simple, and out of the money arising from such sale to retain the principal and interest which might then be due on the said bond or obligation, together with the costs and charges of advertisement and sale of the said premises, rendering the overplus of the purchase money (if any there should be,) unto the said Jeremiah W. Blydenburgh, his heirs, executors, administrators, or assigns; the said sale, if so made, to be forever a perpetual bar, both in law and equity, against the said Jeremiah W. Blydenburgh, his heirs and assigns, and all other persons claiming or to claim the premises, or any part thereof, by, from, or under him, or them, or any of them, as in and by the said indenture of mortgage, duly executed by the said Jeremiah W. Blydenburgh, under his hand and seal, and now in the possession of your orators, ready to be produced, as this honorable court shall direct, reference being thereunto had, will more fully and at large appear.

And your orators further shew unto your excellency, that afterwards,

to wit, on the sixteenth day of January, in the year of our Lord one thousand eight hundred and thirty-seven, the said indenture of mortgage was in due form of law acknowledged before William H. Maxwell, esquire, a commissioner duly appointed to take the acknowledgment and proof of deeds in the State of New York, by virtue of an act of the Legislature of the State of New Jersey, passed the 27th day of December, A. D. 1826, as in and by a certificate of the acknowledgment thereof, endorsed on the said indenture of mortgage, and signed by the said William H. Maxwell, esquire, commissioner as aforesaid, may more fully and at large appear. And the said indenture of mortgage, or an abstract thereof, was afterwards, to wit, on the twenty-eighth day of January, *eight* hundred and thirty seven, fifteen minutes before twelve o'clock meridian, agreeably to the act of the legislature in such case made and provided, in due form of law recorded in the clerk's office of the county of Middlesex, at New Brunswick, in book 15 of mortgages, by Nicholas Booraem, esquire, he then and now being clerk of said county, as by the record of the said mortgage now remaining in the said clerk's office, a minute whereof is endorsed thereon, and signed by the said clerk, fully appears; and to which said record and minute thereof, so endorsed on the said mortgage, your orators, for greater certainty, pray leave to refer, if necessary so to do. And your orators further shew unto your excellency, that on or about the said eighth day of November, in the year of our Lord one thousand eight hundred and thirty-six, the said Jeremiah W. Blydenburgh being indebted to Charles Wadsworth, then resident in the county and State of New York, in the sum of thirteen thousand dollars, by bonds or otherwise, did, for the securing of the repayment thereof, by a second indenture of mortgage bearing date the day and year last mentioned, grant, bargain, sell, alien, release, convey, and confirm, unto the said Charles Wadsworth, the tract or parcel of ground or land before mentioned and described in the said indenture of mortgage to your orators; subject, nevertheless, to the proviso or condition of redemption in the said second indenture of mortgage contained, if the said Jeremiah W. Blydenburgh, his heirs, executors, or administrators, should well and truly pay the said sum of thirteen thousand dollars, with interest thereon, at the time and in the manner therein expressed, as by the said second indenture of mortgage, duly acknowledged and recorded in the clerk's office of the county of Middlesex, on the twenty-eighth day of January, in the year of our Lord one thousand eight hundred and thirty-seven, twelve o'clock meridian, and to which said second indenture of mortgage, acknowledgment, and record thereof, your orators pray leave to refer, may more fully and at large appear.

And your orators further shew unto your excellency, that afterwards, to wit, on or about the seventeenth day of January, in the year of our Lord one thousand eight hundred and thirty-seven, the said Charles Wadsworth assigned the said last mentioned mortgage to Nathaniel Wetherell, junior, of the county and State of New York, as collateral security for the payment of the sum of six thousand one hundred and

forty dollars, or some such sum; but as your orators are unacquainted with the particulars of the said assignment, they leave the same to be made out as this honorable court shall direct.

And your orators further shew unto your excellency, that afterwards, to wit, on or about the fifth day of September, eighteen hundred and thirty-seven, the said Nathaniel Wetherell, junior, assigned the said last mentioned mortgage to one Barnabas Hedge, as collateral security for the payment of the sum of six thousand one hundred and forty dollars, or some such sum, and that the same was subsequently assigned to one Obadiah Holmes; but your orators being unacquainted with the particulars of the said last mentioned assignments, they leave the same to be made as this honorable court shall direct.

And your orators further shew unto your excellency, that afterwards, to wit, on or about the first day of May, in the year of our Lord one thousand eight hundred and thirty-eight, a conveyance of the premises hereinbefore described was made by the said Jeremiah W. Blydenburgh to Juliana Blydenburgh for the alleged consideration of four thousand five hundred dollars, and the deed conveying said premises was on the twenty-fifth day of June, eighteen hundred and thirty-eight, duly acknowledged before Robert H. Morris, esquire, mayor of the city of New York, and was recorded in the clerk's office of the county of Middlesex, on the day next after such acknowledgment, in book 33 of deeds, pages 421–'2.

And your orators further shew unto your excellency, that the said principal sum of five thousand dollars, lawful money as aforesaid, or any part thereof, or any part of the interest thereof, was not paid according to the proviso or condition in the said indenture of mortgage to your orators at the time therein mentioned; but that the said principal sum, and a great arrear of interest thereon, is now due and owing to your orators; by reason whereof the estate and interest in the said mortgaged premises are now become absolute in your orators and their heirs, but redeemable in equity upon the payment of the said principal sum of money, and all the interest thereon due. And your orators had well hoped that the said Jeremiah W. Blydenburgh, Juliana Blydenburgh, Charles Wadsworth, Nathaniel Wetherell, junior, Barnabas Hedge, and Obadiah Holmes, would either have paid to your orators the said sum of five thousand dollars, with all the interest thereon due, or would have permitted your orators to take possession of the said tract of land and appurtenances, and to have peaceably held and enjoyed the same; and for that purpose have frequently, and in a friendly manner, applied themselves unto them, and each of them, and requested them to pay the said principal sum of money, and all the interest due thereon, or else peaceably and quietly to deliver up possession of the said mortgaged premises to your orators. They, the said Jeremiah W. Blydenburgh, Juliana Blydenburgh, Charles Wadsworth, Nathaniel Wetherell, junior, Barnabas Hedge, and Obadiah Holmes, well knowing, as the truth is, that the said mortgaged premises are a very slender *and* security to your orators for; and your orators well hoped that the said Jere-

miah W. Blydenburgh, Juliana Blydenburgh, Charles Wadsworth, Nathaniel Wetherell, junior, Barnabas Hedge, and Obadiah Holmes, would have complied with such reasonable requests of your orators, as in justice and equity they ought to have done. But now, so it is, may it please your excellency, that the said Jeremiah W. Blydenburgh, Juliana Blydenburgh, Charles Wadsworth, Nathaniel Wetherell, junior, Barnabas Hedge, and Obadiah Holmes, combining and confederating with divers other persons at present unknown to your orators, whose names, when known, your orators pray leave may be herein inserted as parties defendant hereto, contriving how to wrong and injure your orators in the premises, they sometimes pretend that the said Jeremiah W. Blydenburgh never made and executed the said bond and mortgage to your orators as is herein before set forth, the contrary whereof your orators charge to be true; and at other times they give out and pretend that the said second mortgage, given by the said Jeremiah W. Blydenburgh to the said Charles Wadsworth, is a prior lien upon the said mortgaged premises; whereas your orators expressly charge the truth to be, that, although the last mentioned mortgage, and the mortgage given to your orators, were executed on the same day, yet that the mortgage of your orators was first lodged with the clerk of the county of Middlesex to be registered, as by the certificates of the said clerk endorsed on the said respective indentures of mortgage fully appears; and, moreover, that the mortgage of your orators having been given to secure part of the purchase money of the said premises, as herein before mentioned, is therefore by law entitled to priority.

And your orators further shew unto your excellency, that the said defendants threaten to commit waste on the said mortgaged premises by cutting down the timber and trees standing and growing therefrom, or causing the same to be cut down. All which actings, and doings, and pretences, of the said Jeremiah W. Blydenburgh, Juliana Blydenburgh, Charles Wadsworth, Nathaniel Wetherell, junior, Barnabas Hedge, and Obadiah Holmes, are contrary to equity and good conscience, and tend to the manifest wrong and injury of your orators. In tender consideration whereof, and for as much as your orators are remediless in the premises in and by the strict rules of the common law, and can only have relief in a court of equity, where matters of this nature are properly cognizable and relievable. To the end, therefore, that the said Jeremiah W. Blydenburgh, Juliana Blydenburgh, Charles Wadsworth, Nathaniel Wetherell, jr., Barnabas Hedge, and Obadiah Holmes, and their confederates, when discovered, may, upon their several and respective corporal oaths, according to the best and utmost of their several and respective knowledge, information, and belief, full, true, and perfect answers make to all and singular the matters hereinbefore mentioned, as fully, particularly, and distinctly as if the same were herein again repeated; and they, and each of them, thereunto distinctly interrogated, paragraph by paragraph; and that the said Jeremiah W. Blydenburgh, Juliana Blydenburgh, Charles Wadsworth, Nathaniel Wetherell, jr., Barnabas Hedge, and Obadiah Holmes, may be decreed by

this honorable court to come to a fair and just account with your orators for the principal and interest now due and owing to your orators on their said mortgage as aforesaid, and may pay the same, together with your orators' costs and charges in this behalf sustained; and in default thereof that the said Jeremiah W. Blydenburgh, Juliana Blydenburgh, Charles Wadsworth, Nathaniel Wetherell, junior, Barnabas Hedge, and Obadiah Holmes, and each and every of them, and all persons claiming or to claim under them, or either of them, may stand absolutely barred and foreclosed of and from all manner of benefit and advantage of redemption or claim of, in, and to the said mortgaged premises, or any part thereof, and may deliver unto your orators all deeds, demises, and writings whatsoever, relative to or concerning the same; or if your excellency shall deem it more equitable and just, that all and singular the said mortgaged premises, with the appurtenances, may, by the order and decree of this honorable court, be sold, and out of the moneys arising from the sale thereof your orators may be paid the full amount of the principal sum of five thousand dollars hereinbefore mentioned and expressed, and so due to your orators on the said bond or obligation and indenture of mortgage in manner aforesaid, and all the interest money due or to grow due thereon, together with your orators' costs and charges in this behalf sustained; and that your orators may have such other and further relief in the premises as to your excellency may seem proper, and shall be agreeable to equity and good conscience. May it please your excellency, the premises considered, to grant unto your orators the writ of subpœna of the State of New Jersey, with the writ of injunction, if need be, issuing out of and under the seal of this honorable court, to be directed to the said Jeremiah W. Blydenburgh, Juliana Blydenburgh, Charles Wadsworth, Nathaniel Wetherell, jun'r, Barnabas Hedge, and Obadiah Holmes, therein and thereby commanding them, and each of them, on a certain day, and under a certain penalty therein to be inserted, personally to be and appear before your excellency in this honorable court, then and there to answer all and singular the said premises, and to stand to and abide by such order and decree therein as your excellency shall deem meet, and shall be agreeable to equity and good conscience. And your orators will ever pray, and so forth.

E. WOOD,
Sol. and of counsel with compl'ts.
W. H. LEUPP,
Of counsel with compl'ts.

Same cause—order for publication. Filed October 31*st*, 1842.

It appearing to this court that the complainants have filed their bill in the above cause for the foreclosure and sale of certain mortgaged premises in the said bill mentioned, and that process of subpœna to appear and answer, directed to the defendants, hath been regularly issued, returnable to the term of October, eighteen hundred and forty-two, but that the defendants, Jeremiah W. Blydenburgh, Juliana Blydenburgh,

Charles Wadsworth, Nathaniel Wetherell, junior, Barnabas Hedge, and Obadiah Holmes, could not be found in this State to be served therewith, and that they have not caused their appearance to be entered as in case such process had been duly served; and it being made to appear, by affidavit, to the satisfaction of the chancellor, that the said absent defendants reside out of the State of New Jersey, to wit, in the State of New York, it is thereupon, on this thirty-first day of October, in the year of our Lord one thousand eight hundred and forty-two, on motion of Edward Wood, solicitor of the complainants, by this order, directed by the chancellor, that the said absent defendants do appear, plead, answer, or demur, to the complainants' bill, on or before the third Tuesday of January next, or that, in default thereof, such decree be made against them as the chancellor shall think equitable and just.

And it is further ordered, that this order shall, within twenty days hereafter, be served, personally, on the said absent defendants by a delivery of a copy thereof to them, or be published within the said twenty days in the Fredonian, a newspaper printed at New *New* Brunswick, in this State, and continued therein for six weeks successively, at least once in every week; also, for a like space of time, and in like manner, in the New York American, a newspaper printed in the city of New York.

WM. PENNINGTON, *C.*

Same cause.—Separate plea of Juliana Blydenburgh.

Filed January 17th, 1843.

To his excellency William Pennington, governor and chancellor of the State of New Jersey:

The separate plea of Juliana Blydenburgh, one of the defendants to the bill of complaint of Henry Cotheal and David Cotheal, against Jeremiah W. Blydenburgh, Juliana Blydenburgh, Charles Wadsworth, Nathaniel Wetherell, jr., Barnabas Bates, and Obediah Holmes, defendants. This defendant, by protestation not admitting all or any of the matters in complainants' said bill to be true, as therein stated and alleged, to the whole of the said bill doth plead in bar, that the said mortgage referred to in said bill alleges an indebtedness of five thousand dollars from Jeremiah W. Blydenburgh to the said complainants, and an agreement to pay interest on the same at the rate of seven per cent. per annum, for the loan or forbearance of the said moneys for one year. And this defendant avers and states, that such alleged indebtedness arose on a contract in New Jersey, subject to 1823, in relation to New Jersey lands. And that the said agreement was consummated, and the said mortgage delivered in the said State of New Jersey. And that the said mortgage is upon lands in the State of New Jersey. And this defendant further in fact says, that the State of New Jersey, by an act of the legislature, passed the eighth day of February, 1797, among [other] things, enacted, as follows:

Sec. 1. No person shall, upon any contract, take, directly or indirectly, for loan of any money, wares, merchandise, goods, or chattels, above

the value of seven dollars for a year, and after that rate for a greater or less sum, or for a longer or shorter time.

Sec. 2. All notes, bills, bonds, mortgages, contracts, covenants, conveyances, and assurances, which shall be made for the payment or delivery of any money, wares, merchandise, goods, or chattels, so to be lent, on which a higher interest is reserved or taken than is hereby allowed, shall be utterly void. And this defendant further in fact says, that by a supplementary act of the said State of New Jersey, passed the fifth day of December, 1823, it was enacted as follows:

Sec. 1. From and after the fourth day of July, next ensuing, no person shall, upon any contract, take, directly or indirectly, for loan of any money, wares, merchandise, goods, or chattels, above the value of six dollars for the forbearance of one hundred dollars for a year, and after that rate for a greater or less sum, or for a longer or shorter time.

Sec. 2. The several sections and provisions in the said act to which this is a supplement, concerning the rate of interest therein mentioned and allowed, shall be deemed and taken to be in force, and apply after the fourth day of July, as aforesaid, to the rate of interest herein mentioned and allowed, as if six per centum and not seven per centum was mentioned as the rate of interest in the said several sections and provisions. Provided, nothing in this act contained shall be construed to impair the obligation of any contract made before the fourth day of July, as aforesaid, for the loan of any money, wares, merchandise, goods, or chattels, or the interest taken and reserved, due or growing due thereon; but as well any such contract of loan as any other contract made before the said fourth day of July, and the interest reserved, or to be allowed or taken thereupon, shall be, and remain and continue, as if this act had not been passed. And this defendant insists upon the said acts, and pleads that the said mortgage, and every thing therein contained, is within the provisions of the said acts, which are public acts, not repealed, but remaining in full force and effect, and that the said mortgage is utterly void. All of which matters and things this defendant doth plead in bar to the aforesaid bill of the said complainants, and humbly craves whether she ought to make any other or further answer to the aforesaid bill, above pleaded to.

JULIANA BLYDENBURGH.

Subscribed and sworn before me, this 16th January, 1843.

WM. H. MAXWELL,
Commissioner, under the act of the legislature of the State of New Jersey, passed 27th Dec., 1826.

CITY AND COUNTY OF NEW YORK, *ss:*

On the 16th day of January, 1843, before me, William H. Maxwell, commissioner, under the act of the legislature of the State of New Jersey, &c., appeared Juliana Blydenburgh, who being by me duly sworn, according, did depose and say, that she has read the foregoing plea or answer, and knows the contents thereof, and that the same is

true of her own knowledge, except as to the matters which are therein stated to be on the information and belief of others, and as to those matters she believes them to be true.

WM. H. MAXWELL,
Commissioner, under the act of the legislature of the State of New Jersey, passed 27th Dec., 1826.

Same cause.—Answer of Jeremiah W. Blydenburgh.

Filed January 17th, 1843.

To his excellency William Pennington, governor and chancellor of the State of New Jersey:

The separate answer of Jeremiah W. Blydenburgh, to the bill of complaint of Henry Cotheal and David Cotheal, against Jeremiah W. Blydenburgh, Juliana Blydenburgh, Charles Wadsworth, Nathaniel Wetherell, jr., Barnabas Bates, and Obadiah Holmes, defendants. This defendant, saving and reserving to himself now, and at all times, all manner of benefit of exception that can be had or taken to the manifold errors, uncertainties, and imperfections in the complainants' said bill of complaint, for answer thereunto, or unto so much and such parts thereof as he is advised are material or necessary to answer, answering, says: That he admits that the said complainants, Henry Cotheal and Daniel Cotheal, were on or about the eighth day of November, one thousand eight hundred and thirty-six, and for a considerable time previous thereto, seized or pretended to be seized, of a certain tract of land, situate at South Amboy, in the State of New Jersey, being the same tract of land referred to, and afterwards at length described in complainants' said bill; and this defendant avers and declares, that they so continued seized of said tract up to the twenty-eighth day of January, one thousand eight hundred and thirty-seven. And this defendant further answering, expressly and positively denies that he, at the city of New York, on the 8th day of November, 1836, or at any other time, in said city or State, ever became and was justly indebted to the said complainants in the sum of five thousand dollars, or ever, in the city or State of New York, purchased from the said complainants the said tract of land above referred to and described in said bill of complainants, or ever at any other time, in the city or State of New York, executed, acknowledged, and delivered to said complainants the bond or the mortgage described in and referred to in complainants' said bill, or at any other time and place, except the time and place hereinafter particularly related and described. And this defendant in fact says, that the said complainants, being so seized of the said tract of land at the time aforesaid, were seemingly anxious to dispose of the same, and were offering the same for sale, both personally and through their agents, at different times and places, about the city of New York, for the price fixed of twenty-five thousand dollars, with a glowing description of its great value as a farm, clay bank, and peat bed; which description, among other things, particularly stated, that the clay bank on said farm was almost inexhaustible; that the first quality of clay obtained from said bank readily brought at the

wharf thereon from one dollar, to one dollar and fifty cents per load of fourteen bushels; and the second quality of said clay fifty cents per load. That the total expense of mining, digging, and delivering said clay upon the wharf did not exceed fifty cents per load; that the second quality of clay could be sold in sufficient quantities to defray the entire expense of mining, digging, and delivering both qualities. And that the said clay bank would, under proper management, for the raw clay alone, yield a clear income of three thousand dollars per annum. That they had constructed a railway, with other conveniences, for the delivering the clay on board the boats in the bay. That the peat bed was extensive, and the farm otherwise possessed unusual advantages, having fifteen hundred peach trees thereon, with other choice fruits. These statements were repeatedly made by the said complainants to this defendant; and this defendant being induced from the respectability of the said defendants to *belief* their statements as aforesaid made to be materially true and correct, and without any intention to mislead this defendant; and this defendant having, in company with said David Cotheal, visited said farm, and discovered part of their aforesaid statement to be true, in the following respects, that is to say, that there was on said farm a large quantity of fruit trees, and a large quantity of clay; that there was a railway as represented, and other *inconveniences* for delivering the clay on board the boats; this defendant was induced to rely upon their statements as to the expense of mining, digging, and delivering said clay on board the boats; and having no other means of ascertaining the expense of mining, digging, and delivering said clay, but from their aforesaid statements of the said complainants, they alone knowing such expense, and so believing and relying upon the truth of their said representations, that the said clay bank would alone, under proper management, yield a clean income of three thousand dollars per annum for the raw clay alone, this defendant was induced by such representations, so made by the said complainants, to inter into a negotiation for the *purpose* of the said farm and clay bank, being the same property described in complainants' said bill. But this defendant being unable to raise so large a capital as twenty-five thousand dollars, entered into a negotiation with one Charles Wadsworth to purchase the said property from the said Cotheals, upon this defendant's agreeing to secure the said Wadsworth for his advance of capital by a mortgage upon the said farm; and after a long negotiation, a parol agreement in the city of New York was concluded upon in the month of November, 1836, with said Wadsworth, as follows: Cotheals were to execute a deed of the said farm to this defendant for the consideration of twenty-two thousand five hundred dollars, and to receive twenty thousand dollars from the said Wadsworth, as by their agreement with him; Juliana Blydenburgh was to release her interest in certain leasehold property in the city of New York, then held by the said Cotheals subject to her interest, for which she was to receive the sum of four thousand five *thousand* dollars from this defendant, and said Wadsworth was to allow this defendant the last mentioned sums on account of the twenty-two thousand five

hundred dollars purchase money, and this defendant was to execute a mortgage of eighteen thousand dollars to said Wadsworth upon receiving the conveyance, payable by instalments of three thousand dollars per annum, upon the supposition that said clay bank would yield that income, according to the representations made by the said Cotheals.

And afterwards, in the month of January, one thousand eight hundred and thirty-seven, the said Wadsworth being unable to pay the said Cotheals the entire sum of twenty thousand dollars, it was proposed to this defendant to execute a mortgage for the sum of five thousand dollars to the said Cotheals, upon receiving a conveyance of the said farm from the said complainants as a part of the purchase money, and a second mortgage upon the same property to said Wadsworth for the residue of said purchase money. And then, in preparing such proposed mortgage of five thousand dollars to said complainants, the question arose, as to the rate of interest to be reserved upon such mortgage and the accompanying bond, the said complainants insisting upon seven per cent. per annum, to which this defendant objected, and some sharp words ensued thereon, and a long discussion upon the subject. But it was finally, upon the suggestion of the said Cotheals, drawn, by or under the direction of Henry J. Faltus, esquire, payable at their complainant's counting-house, in the city of New York, for the express purpose of evading the statute of New Jersey, regulating the interest of money, the said David Cotheal observing at the time, that he "would run his risk; if the Chancellor of New Jersey would not allow seven per cent. he would have to take up with six." And after being so drawn, reserving seven per cent. interest per annum, and dated as of the preceding November, was delivered to this defendant to be executed and acknowledged.

And this defendant afterwards executed the said bond, and also executed the said mortgage, and acknowledged the execution thereof before William Maxwell, in the city of New York, on or about the seventeenth day of January, 1837; but no papers were interchanged after execution, or final agreement, consummated on the subject of said land, or bond and mortgage, in the State of New York, between this defendant and the said complainants.

And afterwards, on the twenty-eighth day of January, one thousand eight hundred and thirty-seven, at the city of New Brunswick, in the county of Middlesex, in the State of New Jersey, in the clerk's office, in presence of Nicholas Booraem, esquire, this defendant received from the said complainants, from the hands of their authorized agent for that purpose, a deed of conveyance for the said land; and then and there this defendant delivered to such agent, Alexander J. Cotheal, a bond and mortgage for the sum of five thousand dollars, bearing interest at the rate of seven per cent. per annum, on a corrupt and unlawful agreement to pay such unlawful interest, which is the same identical bond and mortgage described in complainant's said bill of complaint; and this defendant, at the same time and place, placed on record for Charles Wadsworth a mortgage on the same property for thirteen thousand

dollars, which is the same mortgage referred to in complainant's said bill for that sum.

And this defendant further, in fact, says, that soon after the delivery of such conveyance for the said land, he went into possession of the same by virtue of such deed, and in the month of March following commenced the business of vending clay from the said clay bank, employing for the most [part] the same workmen hitherto employed by the said Cotheals, and under the usual advantages hitherto possessed by the said complainants for vending the same, and actually did sell, for the price of one dollar per load, something like four hundred loads of clay that had been partly excavated by the previous management of the said Cotheals at a great loss, the expenses of digging and delivering the same greatly exceeding the sum received therefor.

And upon further inquiry, investigation, and experiment, found out and ascertained that said clay bank was entirely worthless, and never had paid its expenses under any previous management, except upon the erroneous valuation of adding the cost of the fixtures and railway to the price of the clay sold. This defendant, finding that the statements of the said Henry and David Cotheal to this defendant, respecting the nett income of said clay bank, upon the supposed truth of which he had been solely induced to purchase, and execute, and deliver the said bonds and mortgages at the city of New Brunswick, in the State of New Jersey aforesaid, were wholly erroneous and untrue, or wilfully fraudulent and false, considered himself greatly injured and defrauded, and not bound by the said bonds and mortgages, which had been delivered under a misapprehension of facts, arising from the statements of said Cotheals, which statement this defendant charges to have been made by said Cotheals under a mistaken knowledge of facts in themselves, or through a wilfully corrupt and deceitful intention to injure and defraud this defendant. From the great respect hitherto entertained by this defendant towards the said complainants, he is willing to hope the former.

And this defendant further answering says, that, as to the alleged assignment of said mortgage of thirteeen thousand dollars by Charles Wadsworth to Nathaniel Wetherell, junior, this defendant is ignorant, except from information and belief, and therefore admits it to be true upon information only.

And this defendant further answering, says, that as to the alleged assignment of the same mortgage by said Wetherell to Barnabas Bates, this defendant is also ignorant, but believes it to be true. And as to any subsequent assignment of the same mortgage to Obadiah Holmes, this defendant is wholly ignorant, and therefore neither admits or denies the same.

And this defendant further answering says, that *on that*, on the first day of May, one thousand eight hundred and thirty-eight, he sold and conveyed the farm and premises described in said mortgage to Juliana Blydenburgh, for the consideration of four thousand five hundred dollars, being the amount of her interest in New York property by her

released on the originally intended purchase of said farm, for which this defendant had never been able to otherwise repay her. And this defendant admits that the said Juliana Blydenburgh went into possession of said property under her deed, and still remains in possession thereof as her own. And this defendant further says, that said Juliana Blydenburgh has consequently paid more than the entire value of said land, and is rightfully entitled to hold the same, free from any claim of the said complainants, who have already received, as they admit, thirteen thousand dollars from the said Wadsworth, being ten thousand dollars more than the said property is or ever was worth at the highest valuation.

And this defendant further answering admits, that he has not paid the said bond and mortgage of five thousand dollars, or any part thereof; and further alleges, that he does not consider the said complainants, either justly, morally, or equitably, entitled to the same, or any part thereof; but, on the contrary, this defendant alleges that the said bond and mortgage were obtained through misrepresentation and fraud of the said complainants, and ought to be declared void; and that this defendant is not indebted to the said complainants in any sum of money *of money* of any kind or nature upon a just and equitable settlement of their accounts. And this defendant further, in fact, says, that the State of New Jersey, by an act of the legislature, passed the eighth day of February, one thousand seven hundred and ninety-seven, among other things, enacted as follows:

Sec. 1. No person shall, upon any contract, directly or indirectly, for loan of any money, wares, merchandise, goods or chattels, above the value of seven dollars for the forbearance of one hundred dollars for a year, and after that rate for a greater or less sum, or for a longer or shorter time.

Sec. 2. All notes, bills, bonds, mortgages, contracts, covenants, conveyances, and assurances, which shall be made for the payment or delivery of any money, wares, merchandise, goods, or chattels, so to be lent, on which a higher interest is reserved or taken than is hereby allowed, shall be utterly void.

And this defendant further, in fact, says, that by a supplementary act of the State of New Jersey, passed the fifth day of December, one thousand eight hundred and twenty-three, it was enacted as follows:

Sec. 1. From and after the fourth day of July, next ensuing, no person shall, upon any contract, take, directly or indirectly, for loan of any money, wares, merchandise, goods, or chattels, above the value of six dollars for the forbearance of one hundred dollars for a year, and after that rate for a greater or less sum, or for a longer or shorter time.

Sec. 2. The several sections and provisions in the said act, to which this [is] a supplement, concerning the rate of interest therein mentioned and allowed, shall be deemed and taken to be in force, and apply, after the fourth day of July, as aforesaid, to the rate of interest herein mentioned and allowed, as if six per centum, and not seven per centum, was mentioned as the rate of interest in the said several sections and pro-

visions. Provided nothing in this act contained shall be construed to impair the obligation of any contract made before the fourth day of July, as aforesaid, for the loan of any money, wares, merchandise, goods, or chattels, or the interest taken, reserved, due, or growing due thereon; but as well any such contract of loan as any other contract made before the said fourth day of July, and the interest reserved, or to be allowed, or taken thereupon, shall be, and remain, and continue, as if this act had not been passed.

And this defendant insists upon the said acts, and says that the said bond and mortgage, and every thing therein contained, are within the provisions of the said acts, and prays the same benefit from the said acts as if they had been more specially pleaded.

And this defendant further answering says, that he admits that said Juliana Blydenburgh refuses to deliver possession of the said farm and premises to the said complainants; but this defendant knows nothing of their friendly applications to the other defendants for that purpose.

And this defendant further answering denies that he has refused to come to a just and true account with the said complainants; but, on the contrary, avers that he is very ready to do so, and has been, for the last five years, endeavoring, by all means in his power, to bring about an amicable and equitable settlement with the said complainants, but wholly without effect, and is at last obliged to throw himself upon the law of the land and the protection of the court.

And this defendant further answering denies all and all manner of unlawful combination and confederacy in the complainants' said bill charged against him; without that, that all that is not hereby and herein sufficiently answered, that is material or necessary to answer, confessed or avoided, traversed or denied, is true, to the knowledge and belief of this defendant. All of which matters and things this defendant avers to be true, and is now, and at all times, ready to maintain and to prove, as this honorable court shall direct, and prays to be hence dismissed with his reasonable costs and charges in this behalf most wrongfully sustained.

JEREMIAH W. BLYDENBURGH.

NEW JERSEY, *ss:*

Jeremiah W. Blydenburgh, the above named defendant, being duly sworn, on his oath saith, that the matters and things set forth in the above answer, so far as they relate to his own acts, are true, and so far as they relate to the acts of others he believes them to be true.

JEREMIAH W. BLYDENBURGH.

Sworn and subscribed, before me, this seventeenth day of January, A. D. 1843.

SAM'L R. GUMMERE,
Master in chancery.

Same cause.—Rule of hearing.

Entered February 2, 1843.

It is ordered, on motion of Juliana Blydenburgh, pro se, that the above cause be set down for hearing on the first day of the next stated term of this court, to be held at the State house, in the city of Trenton, at the hour of ten o'clock in the forenoon of that day, or as soon thereafter as counsel can be heard thereon.

By the court: SAMUEL R. GUMMERE, *Clerk.*

Same cause.—Replication.

Filed March 10, 1843.

These repliants, saving and reserving to themselves all and all manner of advantage of exception to the manifold insufficiencies of the answer of the said Jeremiah W. Blydenburgh, for replication thereto say, that they will aver and prove their said bill to be true, certain, and sufficient in the law to be answered unto, and that the said answer of the said defendant is uncertain, untrue, and insufficient to be replied unto by these repliants; without that, that any other matter or thing whatsoever in the said answer contained, material or effectual in the law to be replied unto, confessed and avoided, traversed or denied, is true. All which matters and things repliants are, and will be, ready to aver and prove, as this honorable court shall direct; and humbly pray, as in and by the said bill they have already prayed. E. WOOD,

Solicitor and of counsel with the complainants.

Same cause.—Order overruling plea.

Filed April 5th, 1843.

The chancellor having heard the argument of the counsel for the respective parties on the separate plea of Juliana Blydenburgh, filed in the above cause, it is ordered, on motion of W. H. Leupp, of counsel with the complainants, that the said separate plea of Juliana Blydenburgh be overruled, with costs, to be paid by the said defendant. And that the said defendant file her answer to the complainants' bill in forty days, and, if she fail so to do, that the said bill be taken as confessed against said defendant.

Dated April the fifth, eighteen hundred forty-three.

WM. PENNINGTON, *C.*

Same cause.—Separate answer of Juliana Blydenburgh.

Filed May 11, 1843.

To his excellency William Pennington, governor and chancellor of the State of New Jersey:

The separate answer of Juliana Blydenburgh to the bill of complaint of Henry Cotheal and David Cotheal, complainants, against Jeremiah W. Blydenburgh, Juliana Blydenburgh, Charles Wadsworth, Nathaniel Wetherell, jr., Barnabas Hedge, and Obadiah Holmes, defendants:

This defendant, saving and reserving to herself all manner of benefit

of exception that can be had or taken to the manifold errors, uncertainties, and imperfections in the complainants' said bill of complaint, for answer thereunto, or unto so much and such parts thereof as she is advised are material or necessary to answer, answering, says, that she admits, to the best of her knowledge and belief, that the said complainants, Henry Cotheal and David Cotheal, were seized of the tract of land and premises, described in their said bill of complaint, at the time therein stated; and that, by a certain deed of conveyance, executed by them and their respective wives, under date of November 8th, 1836, the said premises were, at the city of New Brunswick, in the State of New Jersey, on the twenty-eighth day of January, one thousand eight hundred and thirty-seven, conveyed by an actual delivery of said deed to Jeremiah W. Blydenburgh, then in the city and State of New York, for the consideration of twenty thousand dollars; but this defendant has never heard, or been informed, except by said bill, that such sale or delivery of such deed, in pursuance thereof, took place previous to the time last stated, or in the city or State of New York, and therefore positively denies the same.

And this defendant says, that the said Jeremiah W. Blydenburgh, for the forbearance and giving day of payment of the sum of five thousand dollars, alleged to be then due the said complainant, as a part of the purchase money of said land, did agree, to and with the said Henry and David Cotheal, to pay, and the said complainant did agree to receive interest on the said sum of five thousand dollars, from and after the rate of seven per cent. per annum, for the term of one year, (which agreement this defendant charges to have been in violation of the statute of New Jersey relating to the interest of money,) and to secure such principal and unlawful interest by a mortgage on the said land; and, in pursuance of such unlawful agreement, the said Jeremiah did execute, and on the 28th day of January, 1837, aforesaid, at the city of New Brunswick, in the State of New Jersey, deliver, unto Alexander J. Cotheal, the authorized agent of the said complainant, by them appointed, and sent to New Brunswick, for the purpose of receiving the same on their behalf, a certain bond and mortgage, reserving such unlawful interest aforesaid, which bond and mortgage are the same, in fact, set out and described in complainants' said bill, and which description, in other respects, this defendant believes to be materially correct. And this defendant admits that the said mortgage was recorded at the time and in the manner stated in said bill of complaint.

And this defendant further says, that the State of New Jersey, by an act of the legislature, passed the 8th day of February, 1797, among other things, enacted as follows: Sec. 1. No person shall upon any contract take directly or indirectly, for loan of any money, wares, merchandise, goods, or chattels, above the value of seven dollars, for the forbearance of one hundred dollars for a year, and after that rate for a greater or less sum, or for a longer or shorter time. Sec. 2. All notes, bills, bonds, mortgages, contracts, covenants, conveyances, and assurances, which shall be made for the payment or delivery of any money,

wares, merchandise, goods, or chattels, so to be lent, on which a higher interest is reserved or taken than is hereby allowed, shall be utterly void.

And this defendant further says, that by a supplementary act of the State of New Jersey, passed the fifth day of December, 1823, it was enacted as follows:

Sec. 1. From and after the fourth day of July, next ensuing, no person shall, upon any contract, take directly or indirectly, for loan of any money, wares, merchandise, goods, or chattels, above the value of six dollars for the forbearance of one hundred dollars for a year, and after that rate for a greater or less sum, or for a longer or shorter time.

Sec. 2. The several sections and provisions in the said act to which this is a supplement, concerning the rate of interest therein mentioned and allowed, shall be deemed and taken to be in force, and apply, after the fourth day of July, as aforesaid, to the rate of interest herein mentioned and allowed, as if six per centum, and not seven per centum, was mentioned as the rate of interest in the said several sections and provisions. Provided nothing in this act contained shall be construed to impair the obligation of any contract made before the fourth day of July, as aforesaid, for the loan of any money, wares, merchandise, goods, or chattels, or the interest taken, and reserved, due, or growing due thereon; but as well any such contract of loan, as any other contract made before the said fourth day of July, and the interest reserved, or to be allowed, or taken thereupon, shall be, and remain and continue, as if this act had not been passed.

And this defendant insists upon the said acts, and prays the same benefit therefrom as if the same were more specially pleaded.

And this defendant further answering admits, that to the best of her knowledge and belief, that the said Jeremiah W. Blydenburgh did, at the city of New Brunswick, at the time aforesaid, to wit, the 28th day of January, 1837, deliver unto the said clerk of Middlesex county, New Jersey, a mortgage of thirteen thousand dollars in favor of Charles Wadsworth, upon the same land and premises in other respects as stated in said bill.

And this defendant has heard and believes, that said Wadsworth did, on the sixteenth day of January, 1837, in anticipation of the aforesaid mortgage of thirteen thousand dollars being subsequently delivered, make, execute, and deliver unto one Nathaniel Wetherell, jr., a deed of assignment purporting to be of such mortgage; but this defendant denies, that at the delivery of such assignment the said Jeremiah had any interest in the premises.

And this defendant has heard and believes, that said Wetherell, sometime afterwards, executed an assignment of said mortgage to one Barnabas Hedge, as stated in complainants' said bill; but this defendant has no knowledge whatever of any assignment of said mortgage from said Hedge to Obadiah Holmes, and doubts whether any such exists.

And this *deponent* further says, that on or about the first day of May, one thousand eight hundred and thirty-eight, the said Jeremiah being indebted to this defendant in the sum of four thousand five hundred

dollars, in part, for her interest in certain houses, he, the said Jeremiah, did sell and *to* in fee to this defendant, the before described land and premises in discharge of said debt; and this defendant admits the conveyance and record thereof as stated in said bill.

And this defendant further answering says, that she has never heard of any payment of the said five thousand dollars, or any part thereof, and does not believe that any part thereof has been paid; but this defendant denies the same, or any part thereof, to be justly due, or the complainant to be equitably entitled to the same.

And this defendant further denies that the said complainants have become seized of an absolute estate at law in the said premises, by virtue of such mortgage; but, on the contrary, contends that said mortgage is entirely void, and that the complainants have no estate in the premises.

And this defendant admits that the said premises would be a slender and scanty security for the sum of five thousand dollars, if any such sum were due thereon, but denies that she has ever threatened to commit waste on the premises by cutting timber or otherwise; but claims to hold the same as her own absolute estate, and use the same as she may be advised.

And this defendant further answering denies all and all manner of unlawful combination and confederacy in the complainants' said bill charged against; without that, that all that is not herein and hereby sufficiently answered, that is material or necessary to answer, confessed or avoided, traversed or denied, is true, to the knowledge or belief of this defendant; all of which matters and things this defendant avers to be true, and is ready to maintain and prove as this honorable court shall direct; and prays to be hence dismissed, with *his* reasonable costs and charges in this behalf most wrongfully sustained

JULIANA BLYDENBURGH.

NEW JERSEY, *Hudson county, ss:*

Juliana Blydenburgh, the above named defendant, being duly sworn, on her oath saith, that the matters and things set forth in the above answer, so far as relate to her own acts, are true, and so far as relates to the acts of others she believes them to be true.

JULIANA BLYDENBURGH.

Subscribed and sworn, this 10th day of May, A. D. 1843, at Jersey city.

PETER BENTLEY,
Master in chancery, New Jersey.

Same cause.—Replication to the answer of Juliana Blydenburgh.

Filed July 10th, 1843.

These repliants, saving and reserving to themselves all and all manner of advantage of exception to the manifold insufficiencies of the said answer, for replication thereunto say, that they will aver and prove their said bill to be true, certain, and sufficient in the law to be answered

unto, and that the said answer of the said defendant is uncertain, untrue, and insufficient to be replied to by these repliants; without that, that any other matter or thing whatsoever in the said answer contained, material or effectual in the law to be replied unto, confessed and avoided, traversed or denied, is true. All which matters and things these repliants are, and will be, ready to aver and prove as this honorable court shall direct; and humbly pray, as in and by their said bill they have already prayed.

E. WOOD, *Solicitor for and of counsel with the complainants.*

Same cause.—Order to examine co-defendant.

Filed October 11th, 1843.

Upon opening the matter to the court, by W. H. Leupp, of counsel with the complainants, it being alleged that Charles Wadsworth, one of the defendants in the above stated cause, is a material witness for the said complainants, and that he is not interested in the matters in question in the said cause.

It is ordered, that the said complainants be at liberty to examine the said Charles Wadsworth, as a witness for them, the said complainants, in the said cause, saving all just exceptions. Dated the second Tuesday in July, in the year A. D. eighteen hundred and forty-three.

WM. PENNINGTON, *C.*

Same cause—Rule of Hearing, entered March 25th, 1844.

It is ordered, on motion of William H. Leupp, solicitor for the complainants, that this cause be set down for hearing on the first day of the next stated term of this court, to be held at the State house in the city of Trenton, at the hour of ten o'clock in the forenoon of that day, or as soon thereafter as counsel can be heard thereon.

By the court: SAM'L R. GUMMERE, *Clk.*

Same cause—Rule of Hearing, entered June 21, 1844.

It is ordered, on motion of E. Wood, esquire, solicitor for the complainants, that this cause be set down for hearing on the first day of the next stated term of this court, to be held at the State house in the city of Trenton, at the hour of ten o'clock in the forenoon of that day, or as soon thereafter as counsel can be heard thereon.

By the court: SAM'L R. GUMMERE, *Clk.*

Same cause—Order for Commission, filed January 7, 1845.

Upon motion made this day by Jeremiah W. Blydenburgh, defendant, in person, and it appearing by affidavit, to the satisfaction of the chancellor, that Alexander J. Cotheal and Henry J. Felters are material witnesses for the defendant in this suit, and that the said Alexander J. Cotheal and Henry J. Felters do not reside in the State of New Jersey, but reside in the city and State of New York, and that the said defendant cannot safely proceed to the hearing of this cause without benefit of their testimony, it was thereupon prayed that a commission

might issue out of and under the seal of this court, directed to Robert H. Morris, esquire, to authorize him to examine the said witnesses above named, on oath or affirmation, upon the interrogatories annexed to the said commission, and to reduce such examination to writing, and to return the same, annexed to the said commission, into this court, with all convenient speed, which is ordered accordingly.

DAN'L HAINES, *C.*

Dated December 31, 1844.

Same cause—Rule of Hearing, entered January 15th, 1845.

It is ordered, on motion of E. Wood, esquire, solicitor for and of counsel with the complainants, that this cause be set down for hearing on the first day of the next stated term of this court, to be held at the State house in the city of Trenton, at the hour of ten o'clock in the forenoon of that day, or as soon thereafter as counsel can be heard thereon. By the court:

SAM'L R. GUMMERE, *Clk.*

Same cause—Rule of Hearing, entered March 31st, 1845.

It is ordered, on motion of E. Wood, esquire, solicitor for and of counsel with the complainants, that this cause be set down for hearing on the first day of the next stated term of this court, to be held at the State house in the city of Trenton, at the hour of ten o'clock in the forenoon of that day, or as soon thereafter as counsel can be heard thereon.

By the court: SAM'L R. GUMMERE, *Clk.*

Same cause—Order to Re-examine, filed March 26, 1845.

It appearing by affidavit, to the satisfaction of this court, that Henry J. Feltus, esq., a witness on the part of the defendants, is absent from this State and from the State of New York, and that his deposition cannot be obtained in time for the hearing of this cause at the next term of this court; and it being alleged that Charles Wadsworth, one of the defendants in this cause, heretofore examined on the part of the complainants, is acquainted with the facts sought to be proved by the testimony of the said Feltus, and it being also alleged that he is no way interested in the event of this suit; it is ordered, that the said Wadsworth be re-examined as a witness in this cause on the part of the defendants, subject to all just exceptions.

O. S. HALSTED, *C.*

Dated March 26, 1845.

Same cause—Interlocutory Decree, filed June 19th, 1845.

This cause coming on to be heard at the last regular term of the court of chancery, held at the State house in the city of Trenton, before the chancellor, in the presence of W. H. Leupp, of counsel with the complainants, and J. W. Blydenburgh, for himself and Juliana Blydenburgh, defendants therein, and the pleadings, depositions, exhibits, and proofs being read, and the arguments of the respective counsel being heard and considered, and the chancellor having taken time to

advise thereon; and now, on this eighteenth day of June, in the year of our Lord eighteen hundred and forty-five, at a court of chancery, by Oliver S. Halsted, esquire, chancellor of the State of New Jersey, ordered, adjudged, and decreed, that the claimants are entitled to the relief sought and prayed for by them in their said bill of complaint, and to have made of the premises in the said bill and mortgage of the complainants described the amount due upon their said mortgage, with interest, as therein and thereby reserved; and it accordingly ordered that it be referred to J. S. Blauvelt, esqr., one of the masters of this court, to take an account of what is due to the said complainants for principal and interest upon their said mortgage; and it also appearing that the order of this court, made on the thirty-first day of October, eighteen hundred and forty-two, directing that Charles Wadsworth, Nathaniel Wetherell, junior, Barnabas Hedge, and Obadiah Holmes, do appear, plead, answer, or demur to the complainants' bill, on or before the third Tuesday of January, eighteen hundred and forty-three, has been duly published in the manner and as in said order was directed and prescribed, and that such last prescribed and that said last mentioned defendants have not, nor have any or either of them, appeared, pleaded, answered, or demurred to the said bill, within the time limited by law and the said order, or at any other time, but that they have wholly failed and neglected so to do; it is further [ordered] and directed, that the complainants be, and the same is hereby taken as confessed against the said defendants, Charles Wadsworth, Nathaniel Wetherell, junior, Barnabas Hedge, and Obadiah Holmes, to the end that such decree may be made therein as the chancellor shall think equitable and just.

O. S. HALSTED, *C.*

Same cause—Master's Report, filed September 16, 1845.

In pursuance of a certain interlocutory decree, made in this cause by the chancellor, and dated the 18th day of June, in the year of our Lord one thousand eight hundred and forty-five, whereby, among [other] things, it was referred to the subscriber, one of the masters of this court, to take an account of what is due to the said complainants for principal and interest on their mortgage mentioned in the pleadings and proofs in this cause, I have been attended by William H. Leupp, esquire, solicitor and of counsel with the complainants, on this twenty-second day of July, in the year eighteen hundred and forty-five. And the complainants produced before me the said mortgage in their said bill mentioned, bearing date the 8th day of November, in the year eighteen hundred and thirty-six, which said mortgage, as appears by an endorsement made thereon, is an exhibit in this cause, and was heretofore marked "Exhibit B, on the part of complainants, Aug. 25, 1843, J. S. Blauvelt, ex'r, &c." And the said complainants also produced before me the bond intended to be secured by the said mortgage, and bearing even date therewith; which said bond, as appears by an endorsement made thereon, is also an exhibit in this cause, and was heretofore marked "Exhibit A, on the part of the complainants, Aug. 25,

1843, J. S. Blauvelt, ex'r, &c." And I find that there is due to the said complainants, on the day of the date of this my report, on their said mortgage for principal and interest thereof, the sum of eight thousand and forty-six dollars and ninety-four cents. And I do certify and report the schedule hereunto annexed, and making a part of this my report, contains a statement and account of the principal and interest money due to the complainants on their said mortgage, and to which, for greater certainty, I refer.

All which is respectfully submitted.

Dated New Brunswick, July, 22d, 1845.

J. S. BLAUVELT,
Master in Chancery of New Jersey.

Schedule referred to in the foregoing report.

Bond, bearing date the 8th day of November, A. D. 1836, in penal sum of $10,000, conditioned for payment of $5000, with interest, at 7 per centum per annum, semi-annually, at number 49 Water street, New York, which bond is secured by the mortgage mentioned in complainant's bill, and given by the defendant, Jeremiah Blydenburgh, to the complainants - - - -	$5000 00
Interest from date to 22d July, 1845, 8 years, 8 months, 14 days, at 7 p. ct. - - - - -	3046 94
Amount due complainants, 22d July, 1845 - -	$8046 94

J. S. BLAUVELT,
Master in Chancery of New Jersey.

Dated July 22d, 1845.

Same cause.—Final decree.

Filed September 16, 1845.

This cause being opened to the court by William H. Leupp, of counsel with the complainant, and it appearing that, by decree of this court, made in the term of July last, it was adjudged and decreed that the complainants were entitled to the relief sought and prayed by them in their bill of complaint in this cause, and to have made of the premises in said bill and mortgage of the complainants described the amount due upon their said mortgage as therein and thereby reserved, and that it was referred to John S. Blauvelt, esquire, one of the masters of this court, to take and state an account of the amount due on their aforesaid mortgage for principal and interest. Now, upon reading and filing the report of the said master, made in pursuance of the above order, bearing date the 22d day of June, eighteen hundred and forty-five, whereby it appears that there was due to the complainants, for principal and

interest on their mortgage aforesaid, on the day of the date of the said report, the sum of eight thousand and forty-six dollars and ninety-four cents; and it further appearing that, by the decree aforesaid, made as aforesaid, in the term of July last, the said bill of complainants was taken as confessed against Charles Wadsworth, Nathaniel Wetherell, junior, Barnabas Hedge, and Obadiah Holmes, being some of the defendants, and no cause being shewn to the contrary, it is this sixteenth day of September, in the year of our Lord one thousand eight hundred and forty-five, by the honorable Oliver S. Halsted, esquire, chancellor of the State of New Jersey, ordered, adjudged, and decreed, that the said master's report, and all the matters and things therein contained, do stand ratified and confirmed, and that the said complainants are entitled to have the said sum of eight thousand and forty-six dollars *dollars* and ninety-four cents, with interest thereon, to be computed from the date of the said master's report, together with their costs of this suit, to be taxed, raised, and paid out of the said mortgaged premises. And it is accordingly further ordered, adjudged, and decreed, that so much of that tract or parcel of ground or land and premises, in the said mortgage contained, as will be sufficient to raise and satisfy the said debt, interests, and costs, be sold, and that a writ of fieri facias do issue for that purpose out of this court, directed to John S. Blauvelt, esquire, master in chancery of said State, commanding him to make sale, according to law, of so much of the said mortgaged premises as will be sufficient to satisfy the said debt, interest, and costs, and that he pay the same to the complainants or their solicitor; and that, in case more money should be raised by the said sale than shall be sufficient to answer such payment, *that* the surplus money be brought into this court, and deposited with the clerk, to abide the further order of this court, unless otherwise disposed of by the order of this court; and that the said master make return to this court of his proceedings by virtue of the said writ. And it is further ordered, adjudged, and decreed, that the said defendants stand absolutely debarred and foreclosed of and from all equity of redemption of, in, and to so much of the said mortgaged premises as shall be sold as aforesaid by virtue of this decree.

O. S. HALSTED, *C.*

Same cause.—Order for execution.

Filed February 6, 1847.

This matter being opened to the court by William H. Leupp, of counsel with the complainant, and it appearing that a final decree in the above stated cause, directing the sale of the mortgaged premises set forth and described in the complainants' bill, was made on the sixteenth day of September, in the year of our Lord one thousand eight hundred and forty-five, and that an appeal [was made] from the said decree by the defendants, Jeremiah Blydenburgh and Juliana Blydenburgh; and it further appearing that the papers in this cause have been returned to the clerk of this *clerk* by the clerk of the court of errors and appeals, together with a certified copy of a decree made by the said court of

chancery on the twenty-eighth day of January, A. D. 1847, affirming the aforesaid decree of the chancellor in all things, and directing the record to be remitted to this court to be proceeded in according to law, it is now, on this twenty-ninth day of January, in the year of our Lord one thousand eight hundred and forty-seven, on motion of William H. Leupp, of counsel with the complainants, ordered, that an execution or writ of fieri facias do issue forthwith for the sale of the said mortgaged premises, according to the said decree made on the 16th day of September, A. D. 1845; and it is further ordered that the costs of this order be included in the complainant's costs, which were directed in the said last mentioned decree to be paid.

O. S. HALSTED.

Same cause.—Execution returnable to March term, 1847.

NEW JERSEY, *to wit:*

The State of New Jersey, to John S. Blauvelt, esq., master in chan-
[L. S.] cery of said State, greeting:

Whereas, on the sixteenth day of September, in the year of our Lord one thousand eight hundred and forty-five, by a certain decree made in our court of chancery, before our chancellor at Trenton, in a certain cause therein depending, wherein Henry Cotheal and David Cotheal were complainants, and Jeremiah W. Blydenburgh, Juliana Blydenburgh, Charles Wadsworth, Nathaniel Wetherel, junior, Barnabas Hedge, and Obadiah Holmes, were defendants, it was ordered, adjudged, and decreed, that so much of certain mortgaged premises, with the appurtenances, in the bill of complainant in the said cause particularly set forth and described, that is to say: all that certain tract or parcel of ground or land commonly known as the Lazarus Wilmurt tract, situate, lying, and being in the township of South Amboy, county of Middlesex, and State of New Jersey, beginning at the edge of the Amboy bay, where the line of General James Morgan, late of the township of South Amboy, county and State aforesaid, deceased, touches the same; thence, along the aforesaid line, south sixty-three degrees and thirty minutes west, fifty chains fifty-two links, to a stake; thence north twenty-seven degrees and thirty minutes west, twenty-eight chains and forty links, to a stake; thence north sixty-five degrees east, thirty-two chains and ninety-four links, to the aforesaid bay shore; thence down the same, the several courses thereof, to the place of beginning (saving and excepting, out of the said tract above described, the small piece or parcel of ground, said now or lately to belong to Peter Johnson, being about three acres, more or less, and situate upon and near the northwesterly corner of the said tract of land above described.) The said tract of land hereby conveyed, or intended so to be, (after saving and reserving thereout the small lot aforesaid,) containing one hundred *one hundred* and six acres, be the same more or less: (The said premises, above described, being the same which were conveyed to the said Jeremiah W. Blydenburgh, by the said Henry Cotheal and David Cotheal,

and their respective wives, in and by a certain deed, bearing date the eighth day of November, one thousand eight hundred and thirty-six. Together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging, or in any wise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof; and also all the estate, right, title, interest, property, possession, claim, and demand whatsoever, as well in law as in equity, of the said Jeremiah W. Blydenburgh, Juliana Blydenburgh, Charles Wadsworth, Nathaniel Wetherel, junior, Barnabas Hedge, and Obadiah Holmes, of, in, to, and out of the same, as may be needful and necessary for the purposes, be sold to pay and satisfy unto the said complainants the sum of eight thousand and forty-six dollars and ninety-four cents, the principal and interest, secured by a certain mortgage given by Jeremiah W. Blydenburgh to the said complainants, bearing date the eighth day of November, in the year of our Lord one thousand eight hundred and thirty-six, together with lawful interest thereon, from the [said] twenty-second day of July, eighteen hundred and forty-five, until the same be paid and satisfied; and also the costs of the said complainants, with interest from the date of said decree; and that, for that purpose, a writ of fieri facias should issue, directed to John S. Blauvelt, master as aforesaid, commanding him to make sale as aforesaid, and that the surplus money arising from such sale, if any there be, should be brought into the said court, subject to the further order of the said court, as by the said decree, remaining as of record in our said court of chancery at Trenton, doth and may more fully appear. And whereas the defendants, Jeremiah W. Blydenburgh and Juliana Blydenburgh, appealed from the said decree, and our court of errors and appeals have affirmed the said decree in all things, and ordered their record to be remitted to our said court of chancery to be proceeded in according to law, and our chancellor has made an order, bearing date the twenty-ninth day of January, A. D. 1847, directing that a writ of fieri facias should forthwith issue for the sale of the said premises according to the aforesaid decree, and directing that the costs of the said order should be included in the said taxed costs of the complainants. And whereas the costs of the said complainants have been duly taxed at one hundred and thirty-seven dollars and ninety-seven cents: Therefore, you are hereby commanded that you cause to be made of the premises aforesaid, by selling so much thereof as may be needful and necessary for the purpose, the said sum of eight thousand and forty-six dollars and ninety-four cents, together with lawful interest thereon as aforesaid, and also the said sum of one hundred and thirty-seven dollars and ninety-seven cents of costs, with interest thereon as aforesaid, and that you have those moneys before our said chancellor, in our court of chancery aforesaid, at Trenton, on the third Tuesday of March next, to render to the said complainants; and also the surplus money, if any there be, to abide the further order of our said court, according to the decree aforesaid. And you are to make return, at the time and place aforesaid, by certificate under your hand, of the manner in which you shall have executed this our writ, together with this writ.

Witness Oliver S. Halsted, esquire, our chancellor, at Trenton aforesaid, this ninth day of February, in the year of our Lord one thousand eight hundred and forty-seven. WILLIAM H. LEUPP, *Sol'r.*
SAM'L R. GUMMERE, *Cl'k.*

Master's return.

By virtue of this writ, I have advertised, according to law, the lands, tenements, hereditaments, and real estate, within described, to be sold at public vendue and outcry, at the inn kept by Samuel Gordon, in the township of South Amboy, in the county of Middlesex, on the 17th day of April next, at two o'clock, between the hours of twelve and five o'clock in the afternoon of said day.

Dated New Brunswick, March 16, 1847.

J. S. BLAUVELT,
Master in chancery of New Jersey.

Statement of sales, &c.

Amount due complainants, by decree, on 22d July, 1845		$8,046 94	
Interest thence to April 17, 1847		838 63	
Amount of principal and interest due complainant April 17, 1847		–	$8,885 57
Complainants' costs, taxed at		137 97	
Interest from September 16, 1845, to April 17, 1847		13 11	
Costs and interest thereon, due complainants to April 17, 1845		–	151 08
Whole amount due complainants April 17, 1845		–	9,036 65
Amount of sales of mortgaged lands, April 17, 1847		1,600 00	
Deduct master's fees, viz:			
Serving writ and return	1 12		
Advertising	5 00		
Crying vendue one day	1 00		
Cash pd. publishing ad'ment in the Times newspaper	4 75		
Deed and acknowledgment	3 00		
Statement of sales, &c.	1 00		
Commissions on $1,600; 2 p. ct. on $1,000 and 1 p. ct. on $600	26 00		
		41 87	
Net proceeds of sales made April 17, 1847		–	1,558 13
Balance due complainants April 17, 1847		–	$7,478 52

I certify the foregoing to be a true statement and calculation of the amounts due to the complainants on the above stated decree and execution, on the day of the date of the sale of said mortgaged lands and premises, and also of the amount of the sales of said mortgaged lands, and the master's fees, &c., and that there remained due to the complainants, on the day of the date of said sales, upon the above stated decree and execution, the sum of seven thousand four hundred seventy-eight dollars and fifty-two cents, $7,478.52.

J. S. BLAUVELT,
Master in chancery.

Dated New Brunswick, April 26, 1847.

In chancery of New Jersey.

Between HENRY COTHEAL and Daniel Cotheal, complainants, and JEREMIAH W. BLYDENBURGH and others, defendants.

On bill to foreclose and answer. Filed August 25, 1843.

Examinations and depositions in the above named cause, taken before the subscriber, one of the masters and examiners of the said court, at his office, in the city of New Brunswick, in the county of Somerset, this twenty-fifth day of August, in the year of our Lord one thousand eight hundred and forty-three, in the presence of William H. Leupp, esquire, solicitor and of counsel with the complainants, and the defendant, Jeremiah W. Blydenburgh, upon due notice admitted by the parties, attending.

J. S. BLAUVELT, *Exam'r, &c.*

Henry H. Warden, a witness produced on the part of the complainants, being duly sworn, to testify the truth, the whole truth, and nothing but the truth, in the above cause, on his oath says, that he is the subscribing witness to the bond now shown him, (marked Exhibit A, on the part of the complainants;) that his name, subscribed thereto, is his proper handwriting. The said bond was executed at 49 Water street, in the city of New York, and he presumes on the day of its date, though he has no recollection of that fact. Witness thinks David Cotheal was present. The bond must have been executed in the presence of the witness, as he would not have subscribed it as a subscribing witness if [it] had not been so executed; complainants resided there, and have ever since resided in the city of New York.

The witness, being cross examined by the defendant, Jeremiah W. Blydenburgh, says, that he has no recollection of seeing any thing done with the bond at that time except the execution.

HENRY H. WARDEN.

Sworn and subscribed, this 25th day of August, A. D. 1843, before me, at New Brunswick, in the county of Somerset.

J. S. BLAUVELT, *Exam'r, &c.*

A paper writing, purporting to be a bond, made and executed to Henry Cotheal and David Cotheal, by Jeremiah W. Blydenburgh, in penal sum of ten thousand dollars, conditioned for payment of five thousand dollars, to said Henry and David, on or before the eighth day of November, eighteen hundred and thirty-seven, with interest, &c., &c., dated the eighth day of November, eighteen hundred and thirty-six, produced and marked "Exhibit A, on the part of the complainants, Aug. 25, 1843."

J. S. BLAUVELT, *Exam'r, &c.*

A paper writing, purporting to be a mortgage, *mortgage* executed by Jeremiah W. Blydenburgh to Henry and David Cotheal, to secure the payment of the above named bond, and bearing even date therewith, produced and marked "Exhibit B, on the part of the complainants, Aug. 25, 1843."

J. S. BLAUVELT, *Exam'r, &c.*

A paper writing, purporting [to] be a copy of a deed, (certified to be a copy thereof by Nicholas Booraem, clerk of the county of Middlesex, under his hand and seal of office, and taken from the records of said county,) made by Jeremiah W. Blydenburgh to Juliana Blydenburgh, and dated the 1st day of May, 1838, produced and marked "Exhibit C, on the part of the complainants, Aug. 25, 1843."

J. S. BLAUVELT, *Exam'r.*

In chancery of New Jersey.

Between HENRY COTHEAL and David Cotheal, complainants, and JEREMIAH W. BLYDENBURGH, and Juliana Blydenburgh and others, defendants.

On bill to foreclose and answer. Filed Nov. 24, 1843.

MADAM: Please to take notice, that the depositions of witnesses will be taken in this cause, on behalf of the complainants, at the office of John S. Blauvelt, esq., in Albany street, in New Brunswick, before one of the masters and examiners of the court of chancery, on Friday, the 24th day of November, inst., at 11 (eleven) o'clock in the forenoon.

Dated New Brunswick, November the 10th, A. D. 1843.

Yours,

W. H. LEUPP,
Of counsel with the complainants.

To Miss JULIANA BLYDENBURGH.

NEW JERSEY, *ss:*

Be it remembered, that on this fourteenth day of November, A. D. 1843, before me personally appeared Samuel Gordon, who, being duly sworn on his oath, saith, that he served a true and compared copy of the above notice upon Juliana Blydenburgh, above named, personally,

by delivering the same to her, the said Juliana Blydenburgh, on Monday, the thirteenth day of November, A. D. 1843.

SAM'L GORDON.

Sworn and subscribed before me, at New Brunswick, in the county of Somerset.

J. S. BLAUVELT,
Master in chancery of New Jersey.

In chancery of New Jersey.

Between HENRY COTHEAL and David Cotheal, complainants, and JEREMIAH W. BLYDENBURGH, Juliana Blydenburgh and others, defendants.

Examinations and depositions of witnesses in the above stated cause, taken before me, John S. Blauvelt, one of the examiners, &c., of said court, at my office, in the city of New Brunswick, in the county of Somerset, and State of New Jersey, this twenty-fourth day of November, in the year of our Lord one thousand eight hundred and forty-three, at eleven o'clock in the forenoon, in the presence of William H. Leupp, esquire, of counsel with the complainants, and Jeremiah W. Blydenburgh, one of the defendants, on due notice thereof, admitted by him, and upon due proof of notice, &c., to the said Juliana Blydenburgh, which is hereto attached; no person appearing for the other defendants.

J. S. BLAUVELT,
Examiner in chancery of New Jersey.

NEW JERSEY, *ss:*

Charles Wadsworth, one of the defendants in the above cause, being produced on the part of the complainants, and being first duly sworn, according to law, to testify the truth, the whole truth, and nothing but the truth in the above stated cause, on his oath says, I suppose I am the Charles Wadsworth named in the order for taking my testimony. I formerly contracted with the complainants for the purchase of the property mentioned in the mortgage of complainants, stated in the bill in this cause. This was in eighteen hundred and thirty-six; I was to give the complainants in exchange for said property sixteen lots at Yorkville, and a house and lot in Howard street, in the city of New York. The lots at Yorkville were mortgaged, I do not remember for how much, and they were to have been conveyed subject to the mortgage. I am under the impression that the Howard street property was to have been conveyed clear of incumbrance.

In pursuance of the agreement, the Yorkville lots and the Howard street property were conveyed to the complainants, or as they directed, and the Lazarus Wilmot property, being the said mortgaged premises, was conveyed by the complainants to Jeremiah W. Blydenburgh, or Juliana Blydenburgh, I do not recollect which. In addition to which, the complainants paid me the difference of price agreed upon in money, five thousand dollars, or some such sum. I do not remember the ex-

act sum. The contract, under which the conveyance of the Yorkville lots and Howard street property was conveyed, is the same contract under which the said Lazarus Wilmot property was conveyed by the complainant to the Blydenburghs, or one of them; about the same time that I contracted with the complainants for the purchase of the Lazarus Wilmot property, I made a contract with Jeremiah W. Blydenburgh for the sale to him of the said Lazarus Wilmot place. The complainants fully complied with and performed their contract with me above mentioned, on their part. At the time of the contract, the complainants, Jeremiah W. Blydenburgh and Juliana Blydenburgh, and I, resided in the city of New York. I would not have made the contract with the complainants but for my said contract made with Jeremiah W. Blydenburgh. All the said parties continued to reside in New York until after the said contracts were completely executed, and conveyances made on the said bond and mortgage to the complainants fully executed. The complainants and I still are, and always since have been, residents of the city of New York.

The said Charles Wadsworth, being cross examined on the part of and by the said Jeremiah W. Blydenburgh, says, there was a memorandum of the terms of my said contract with the complainants which was not executed. I have seen this memorandum in the hands of complainants' counsel here. I do not recollect the number of the Howard street property, but can find it very well. The deed for the Lazarus Wilmot property, and bond and mortgage, in this suit, were executed in New York; and my impression is, that Alexander Cotheal and Jeremiah W. Blydenburgh came over into New Jersey to have them recorded. I cannot say that I heard the complainants admit that the deed and mortgage were not delivered until after they were recorded; but am under the impression that the complainanants did not wish to trust to the delivery of the papers in New York, but sent Alexander Cotheal to New Jersey with them, that they might all go on record together. The said Lazarus Wilmot property was conveyed to Blydenburgh by the complainants by my direction.

It strikes me that, in my said contract with the complainants, the Howard street property was estimated at twenty-two thousand dollars.

The witness, being again examined in chief on the part of the complainants, says, the actual value of the Howard street property at the time of the contract was about sixteen thousand dollars; its actual value now may be twelve or thirteen thousand dollars. It has since been sold on foreclosure, and it was bought by the mortgagee for about eleven thousand dollars. Mr. Henry J. Feltus, the counsel of Mr. Cotheal, advised Mr. Cotheal not to deliver the deed, except to a third person, to be recorded, to prevent intervening liens.

CHAS. WADWORTH.

Sworn and subscribed before me, this 24th day of November, A. D. 1843, at New Brunswick, in the county of Somerset.

J. S. BLAUVELT,
Examiner in chancery.

In chancery of New Jersey.

HENRY COTHEAL & DAVID COTHEAL, complainants,
and
JEREMIAH W. BLYDENBURGH & JULIANA BLYDENBURGH, and others, defendants.

On bill, &c.—Deposition, filed December 27, 1843.

NEW JERSEY:

Deposition of a witness taken in a cause pending in the court of chancery, in the state of New Jersey, wherein Henry Cotheal and David Cotheal are complainants, and Jeremiah W. Blydenburgh and Juliana Blydenburgh, and others, are defendants, before Mr. Jno. C. Elmendorf, a master and examiner of said court, at the office of Jno. S. Blauvelt, esquire, in the city of New Brunswick, on Wednesday, the 27th day of December, 1843, at 11 o'clock, A. M., in presence of Mr. C. Dunham, for Wm. H. Leupp, of counsel, &c., and Jeremiah W. Blydenburgh, one of the defendants.

JNO. C. ELMENDORF, *M. C.*

George S. Kettlewell, a witness, of lawful age, &c., was produced, and being duly sworn on his oath, saith: And to the question of the solicitor of the complainants, to wit: Was you present when the contract between the complainants to the bill in this cause, and Charles Wadsworth, one of the defendants thereto, was made, and referred to in said Wadsworth's testimony? The said Jeremiah W. Blydenburgh, one of the said defendants, in person objected, as being parol testimony of a written memorandum which is not offered in evidence, and, as a contract not set out in pleadings; and the objection being overruled, the witness saith that he was present. And saith that the said contract, above referred to, was made in the State and city of New York, at the store of the said Henry Cotheal and David Cotheal, the said complainants, in the year of eighteen hundred and thirty-six; that he cannot recollect the precise time; thinks it was in the fore part of the said year.

And to the question of the examinant, what was the legal rate of interest in the State of New York in the year eighteen hundred and thirty-six, at the time the said contract was made? The said Jeremiah Blydenburg excepted; that the fact or rate of interest could not thus be proved by parol. And the exception being overruled, the witness saith, that the legal rate of interest in the State of New York in eighteen hundred and thirty-six, and at the time the said contract, above referred to, was made, was seven per cent. per annum; and that the same rate hath ever since remained, and is now the legal interest in the said State of New York; and further saith not.

Defendant refused to cross examine.

GEO. S. KETTLEWELL.

Sworn and examined before me, this 27th day of December, A. D. 1843.

JNO. C. ELMENDORF.

Testimony, filed July 6, 1844.—*In chancery of New Jersey.*

Examination of witnesses, &c., in a cause depending in the court of chancery of the State of New Jersey, wherein Henry Cotheal and David Cotheal are complainants, and Jeremiah W. Blydenburgh and Juliana Blydenburgh, and others, are defendants; taken at the office of Robert Adrain, in the city of New Brunswick, on Tuesday, the second day of July, eighteen hundred and forty-four, before Robert Adrain, one of the masters and examiners of the said court, in the presence of William H. Leupp, esquire, of counsel with the complainants, and Jeremiah W. Blydenburgh in person, and on due notice of the time and place of taking the same, admitted by the counsel of the complainants, and by the said defendant.

At the opening of the said examination, the counsel for the complainants objected to the examination, as being taken at a very unseasonable time, after the cause was noticed for trial, and but the week before the sitting of the court, and as almost depriving the complainants of the power of introducing rebutting testimony in time, and desired such objections stated by the master.

R. ADRAIN,
Master and examiner.

July 2d, 1844.

Charles Morgan, of the township of South Amboy, in the county of Middlesex, New Jersey, a witness produced on the part of the defendants, Jeremiah W. Blydenburgh and Juliana Blydenburgh, defendants, being duly sworn, deposeth and saith: I am acquainted with the property in South Amboy, generally known as the Lazarus Willmut tract, and as described in the deed now shewn to me. I should think that in 1836 and 1837, that I was sufficiently acquainted with this property as to form an opinion as to its value: it was worth more then than now, as it was then more improved, and I should then think it was worth from 2,500 to 3,000 dollars. I knew something in relation to a clay bank and the working of the same on the premises. I do not recollect precisely whether the clay bank was in operation or not in the year 1836, but it was in operation somewhere about that time. I believe I was present when Mr. Cotheal purchased a part of these premises, but I do not recollect the precise time. I do not recollect the precise sum for which it was struck off, but it was about eleven or twelve hundred dollars. I cannot fix on the year when that purchase was made, but it was after the bank was in operation. There was considerably more timber on the premises at that time than there is now. I am acquainted, somewhat, with the value and qualities of the clay about that quarter. I am acquainted with the expense of excavating clay and delivering it on board the vessels. The value of the best quality of clay, delivered on board, is one dollar a load, and a load contains about nine to ten bushels. From my knowledge of the clay on those premises, (and I have from my business an opportunity of knowing,) I should say that its value is nothing: and my reason for saying so is, that there

is so much earth above the clay which has to be removed, that the expense is more than the value of the clay when obtained. In saying that Mr. Cotheal purchased a part of those premises, my recollection is, that it was sold under a foreclosure, that is, the part which he purchased, as I understood; and that he, Mr. Cotheal, previously held or owned the other part, as I was informed or told. In speaking of it, however, I know nothing of my own knowledge, beyond the fact of the sale.

Being cross examined, further saith: I own lands immediately adjacent to the lands spoken of in that deed; they came to me by inheritance. I have heard that the number of acres in that farm was one hundred and seven; but I did not know exactly at the time the farm was sold, in 1836 or 1837. There was a house and barn, but no other buildings of any consequence that I recollect. I should value my farm in the immediate vicinity more highly. I should not like to set a value on a hundred acres of my land, embracing my clay bank, and I decline setting *an* specific value on my clay bank. It may be worth more, and it may be worth less; as it is impossible to tell the value and character of the clay before it is dug up and ascertained. After Mr. Cotheal purchased the premises, he made large expenditures, with a view of working the clay bank. I could form no idea of the expense of building a railway; it would not be from four to six thousand dollars. It is impossible for me to estimate, with any accuracy, the expense of the railway on the premises. I should not think that that railway (exclusive of the uprights, &c.) would have cost two thousand dollars; if I must estimate it, I should put it from one thousand to fifteen hundred dollars. I cannot put any estimate on the uprights and fixtures, as I do not get out my clay in that way. The Cotheals, while they owned that property, sold a considerable amount of clay; so I understood. I do not know whether the sale to Mr. Blydenburgh embraced also the farming utensils, &c., on the place. I do not know the amount of the mortgage money, spoken of as a foreclosure sale, when Mr. Cotheal purchased. I do not know whether Mr. Blydenburgh or his sister, or whoever occupied the premises, have ever cut any timber on the premises, other than for fire wood. The premises are very accessible, with a daily communication to New York. I do not know whether the money, spoken of as the consideration of the deed now shown to me, was paid in money, or in property, or in any other way.

Being examined again, in chief, he saith: I cannot say whether one hundred and six acres of my land, immediately adjoining the premises of Mr. Blydenburgh, would take in my house and buildings. I have land also adjoining that is worth almost nothing; I would also like to state that I do not know whether Mr. Cotheal, or Mr. Morehouse, erected the railway spoken of on the premises; but either the one or the other did, as I understood.

CHARLES MORGAN.

Sworn and subscribed before me, by the said deponent, this 2d day of July, A. D. 1844.

R. ADRAIN,
Mas. and Examiner.

Andrew Bollen, of the township of South Amboy, in the said county of Middlesex, another witness, produced on the part of the defendants aforesaid, being duly sworn, deposeth and saith: I know the farm on which there is a clay bank, next to Charles Morgan's, esquire, but I do not know it by the name of the Lazarus Willmut tract. I worked in the clay bank owned by Mr. Cotheal in South Amboy. I worked there for Churchill, a part of the time in getting out the clay. I got out the clay for fifteen cents for the ruffiage, and twenty-five cents for the good clay, for the load. At this time, we had only to follow the vein, and put up the uprights as we went along. There was a considerable quantity of timber used to shore up the clay bank; this timber was cut off the farm on which the clay bank was. In the prices spoken of by me we were not at the expense of this timber. There was some wood cut on the place at the time Mr. Cotheal owned it, say 10 or 12 cords, and there was some cut before that, but I do not know how much. I know that the tunnel fell in, and from my experience I knew that, after that event, I could not offer to get out the clay at the prices before mentioned. This tunnel fell in while Mr. Cotheal owned it. I do not think that, since the falling in of the tunnel, it would pay well for working it. I offered Mr. Cotheal, after the falling in of the tunnel, (the railway remaining in order,) to take out the clay for fifty cents a load, but it could not be taken out for that now. I do not know whether Mr. Cotheal, at the time he worked the clay bank, received any profit from it, and have no means of arriving at that fact; when I made this offer to Mr. Cotheal, I made it on the condition of taking the clay from a particular spot, and not from the bank generally. I mean by the word condition, that a particular spot was pointed out by Mr. Cotheal, at which it was understood it was to commence. At the time this spot was pointed out, I considered it more accessible to the good clay than any other spot that we could find.

Being cross examined, saith: In offering to work for fifty cents a load, we consider twelve bushels a load. I rather suspect that it sold for a dollar a load. I do not recollect the length of the railway, but it was of considerable length. I think the entire length of the railway would be half a mile; it might be more; it was generally pine layers, covered with iron. That railway connected the clay bank with the South Amboy bay, and that was the termination of it, and from which termination it was shipped. I recollect seeing the oxen and the mules that Mr. Cotheal owned afterwards upon the place, after Mr. Blydenburgh bought. There was a considerable quantity of this clay sold, at the price before mentioned, of a dollar a load, by Mr. Cotheal.

ANDREW BOTTAN.

Sworn and subscribed before me, by the said deponent, this 2d day of July, A. D. 1844.

R. ADRAIN,
Mas. and Examiner.

The defendant, Jeremiah W. Blydenburgh, also offered in evidence a deed from Henry Cotheal and wife, and David Cotheal and wife, to Jeremiah W. Blydenburgh, dated 8th November, 1836, for certain premises, which I marked exhibit "A," on the part of the said defendants, Jeremiah W. Blydenburgh and Juliana Blydenburgh. The complainants also offered an exemplification of the statute of New York State, on the subject of usury, and requested to have the same made an exhibit; to which the defendants objected, and which I have accordingly marked as exhibit "B," on the part of the complainants.

All which I certify, July 2d, A. D. 1844.

R. ADRAIN,
Mas. and examiner.

Testimony, filed April 1st, 1845.

Examination of witnesses, &c., in a cause depending in the court of chancery of the State of New Jersey, wherein Henry Cotheal and David Cotheal are complainants, and Jeremiah W. Blydenburgh, Juliana Blydenburgh, and others, are defendants; taken at the office of Peter Bentley, in Jersey city, county of Hudson, on the twenty-eighth day of March, in the year of our Lord one thousand eight hundred and forty-five, before Peter Bentley, esq., one of the masters and examiners of the said court, in the presence of the complainants, and of counsel for the said complainants, and of Jeremiah W. Blydenburgh, defendant, in person:

Charles Wadsworth, of the city, county, and State of New York, a witness introduced on the part of the defendants, under an order of the chancellor, being duly sworn, deposeth and saith: That he was present when the mortgage in suit was acknowledged before William H. Maxwell, esquire, in the city of New York, and that the said mortgage was in the possession of Jeremiah W. Blydenburgh, and thinks he was present also when a mortgage made by the said Jeremiah W. Blydenburgh to the deponent was acknowledged before the said William H. Maxwell, esquire; has no doubt but that the acknowledgments were on the sixteenth of January, 1837, of both mortgages. Witness says, that Mr. Blydenburgh had at about that time both the bonds and mortgage in his possession, and that he, witness, went with the said Blydenburgh to said Maxwell to have the mortgages acknowledged.

Question. From whom did you receive your bond?

Answer. From Jeremiah W. Blydenburgh, one of the defendants.

Question. Were any other persons present at that time in the office of Wm. H. Maxwell?

Answer. Does not recollect of any person being present.

Question. Did you see the bond and mortgage in suit in the possession of J. W. Blydenburgh after that time? And [if] yea, state when and where.

Answer. Met Mr. Blydenburgh a few days after at Mr. Cotheal's office, in the city of New York, for the purpose of having the mortgage

delivered, and Mr. Blydenburgh getting his deed; cannot say that he saw the bonds and mortgages at Mr. Cotheal's office, but from what passed he has no doubt but Mr. Blydenburgh had them.

Question. What took place at Mr. Cotheal's office at the time referred to?

Answer. There was a proposition made as to the exchange and delivery of the papers. Mr. Henry Cotheal objected to delivering the deed unless he could be sure that the mortgage of Mr. Blydenburgh to him was put on record before the mortgage of Mr. Blydenburgh to witness was put on record.

Question. Did any delivery of deed, bond, or mortgage referred to, take place at the time referred to?

Answer. There did not any to the knowledge of the witness. (The above question and answer objected to by the complainants.)

Question. After this interview at Mr. Cotheal's office, were you present at any other between the same parties, or some of them, in relation to the same subject?

Answer. I was at Mr. Feltus' office.

Question. What took place at that interview?

Answer. It was understood at that interview that Mr. Blydenburgh and Alexander J. Cotheal should go the next day with the papers to New Brunswick, or wherever they should be recorded in New Jersey.

Question. What was to be done in New Jersey?

Answer. Mr. Blydenburgh was to take the deed, Mr. Cotheal his mortgages.

Question. What were the terms of that agreement or understanding?

Answer. I understood that Mr. Blydenburgh and Cotheal were to meet with their papers at the place of record, in New Jersey, the next day, for the purpose of having the papers recorded in their proper order; Mr. Cotheal's mortgage before witness's mortgage.

Question. Were the deed, bond, and mortgage to be exchanged in New Jersey at the place of record? (Complainants objected to this question as leading.)

Answer. I so supposed or understood.

Question. Have you any knowledge of the delivery of the said deed, bond, and mortgage in the city of New York?

Answer. I have not.

Question. Do you know, or have you any reason to believe, that the said parties went to New Jersey according to the said agreement?

(Complainants object to this question, so far as it goes to the witness's belief.)

Answer. I don't know that the parties went, but he has reason to believe that they went.

Question. Was your mortgage from Mr. Blydenburgh taken over to New Jersey in pursuance of that agreement?

Answer. (Question objected to by complainants.) Mr. Blydenburgh took my mortgage over to New Jersey, and returned it to me.

Question. Was your mortgage ever delivered to you previous to its being taken to New Jersey?

Answer. No, sir.

Question. Was that one of the reasons that induced you to believe that the said parties went to New Jersey in pursuance of the said agreement?

(Objected to by complainants.)

Answer. I dont know but it was.

Question. Have you been previously examined by the complainants in this cause?

Answer. I have.

Question. Where were you called upon by David Cotheal to come over and be so examined?

(Question objected to by complainants.)

Answer. I don't recollect where, but probably some where about Wall street.

Question. Will you be good enough to state what conversation took place there at that time?

Answer. I cannot recollect any conversation in particular.

Question. Did he state what he expected to prove by you?

Answer. I don't recollect that he did.

Question. Did he ask what you could swear to, in relation to any alleged fact?

(Question objected to by complainants.)

Answer. I should think it very likely, but have no recollection of it.

Question. Since your notice of this examination, how many times have you been called on by the complainants to know what you *was* agoing to swear to? (Objected to by complainants.)

Answer. I do not recollect of Mr. Cotheal's speaking to me but once.

Question. Will you state the substance of the conversation at that time; the exact words, if you can recollect them?

Answer. The substance was, if I had recollected any thing different from what I had before testified to.

Question. Did Mr. Cotheal endeavor to induce you to swear to any thing different from what you have sworn to?

Answer. No, sir.

Question. Did he ask you to swear that the papers referred to were delivered in New York?

Answer. No, sir.

Question. Did the mortgage, of which you have spoken, to yourself bear six or seven per cent?

(Question objected to, as leading and irrelevant, by complainants.)

Answer. Six per cent. interest.

Question. For what consideration was your mortgage given?

(Question objected to by complainants.)

Answer. For the consideration money, being for a part of the purchase money of the farm upon which the mortgage was given.

Question. When Henry Cotheal refused to deliver the deed, did Mr. Blydenburgh refuse to deliver the bond and mortgage at the time referred to?

Answer. I don't recollect of any special refusal to deliver; don't know that he was asked to deliver it, but he did not deliver it at that time, as I know of.

Question. Did Mr. Blydenburgh refuse at Mr. Feltus's office to deliver the bond and mortgage? (Objected to by complainants.)

Ans. I don't recollect any refusal; the understanding was that they were to go the next day and put them on record, I believe.

Quest. Was the deed, bond, and mortgage to be delivered in New Jersey? (Question objected to by complainants.)

Ans. As I supposed at that time.

CHARLES WADSWORTH.

Subscribed and sworn to before me, this 28th day of March, A. D. 1845, at Jersey City.

PETER BENTLEY,
Master in Chancery, New Jersey.

Cross examination by complainants.

Quest. What was Mr. Feltus's profession at the time mentioned in your direct examination?

Ans. A counsellor and attorney at law.

Quest. Where was his office?

[Ans.] Under the Butchers' and Drovers' Bank, in the city of New York.

Quest. For whom did he act in the transaction of the business for which you have been examined?

Ans. For the complainants.

Quest. Had you previously agreed to buy the mortgaged premises of the complainants?

Ans. I had.

Quest. Did you make a release to Mr. Blydenburgh?

Ans. I made a sale of the same premises to Mr. Blydenburgh.

Quest. Was the conveyance made by the complainants to you, or to Mr. Blydenburgh by your request?

Ans. Made to Mr. Blydenburgh by my request.

Ques. Was not the mortgage to Mr. Blydenburgh given to you for the whole, or some part of the difference between what you agreed to pay complainants and the price you sold to Mr. Blydenburgh?

Ans. The conversation between me and Mr. Blydenburgh was the same as between me and Mr. Cotheal; so far nominally the nature of the payment from me to Mr. Cotheal was a different kind of payment from that of Mr. Blydenburgh to me.

Quest. Was it agreed between the parties that your mortgage should be a second mortgage?

Ans. It was so understood.

CHARLES WADSWORTH.

Subscribed and sworn to before me, this 28th March, 1845.

PETER BENTLEY,
Master in Chancery, New Jersey.

Direct examination resumed.

Quest. In this purchase of the complainants, by yourself, was there any agreement for a forbearance of the purchase money, or part of it, or a mortgage between you and them?

Ans. No, sir; not in the original agreement; but subsequent there was an agreement for this mortgage.

CHARLES WADSWORTH.

Subscribed and sworn to before me, this 28th day of March, 1845, at Jersey City.

PETER BENTLEY,
Master in Chancery, New Jersey.

I, Samuel R. Gummere, clerk of the court of chancery of the State of New Jersey, do hereby certify, that the foregoing transcript is a true copy of the enrolment and record in the case wherein Henry Cotheal and David Cotheal were complainants, and Jeremiah W. Blydenburgh, Juliana Blydenburgh, Charles Wadsworth, Nathaniel Wetherell, jr., Barnabas Hedge, and Obadiah Holmes, were defendants, taken from book A 3, page 717, &c., of enrolled decrees, and book D 2, page 389, &c., of executions, together with the return of the master on the said execution, and of the testimony taken in the above stated cause, remaining in my said office.

In testimony whereof I have hereunto set my hand and affixed the seal of the said court of chancery, at Trenton, the eighth day [SEAL.] of December, in the year of our Lord one thousand eight hundred and forty-seven.

SAMUEL R. GUMMERE, *Clerk.*

Court of errors and appeal, N. J., January term, 1847.

JEREMIAH BLYDENBURGH and JULIANA BLYDENBURGH, appellants,
and
HENRY COTHEAL and DAVID COTHEAL, respondents.

On appeal from decree of Chancellor.

The court having had the above cause under consideration, the decree of the chancellor was affirmed by an unanimous vote.

Whereupon, the court having seen and inspected the record and proceedings in the court below, with the evidence of the respective parties, and having heard the arguments of counsel thereon, and maturely considered the same, it is ordered, adjudged, and decreed, that the decree of the chancellor be in all things affirmed, and that the appellants pay to the respondents their costs of this appeal, and that the record be remitted to the court of chancery to be proceeded in according to law.

On motion of

WILLIAM H. LEUPP,
Solicitor and of counsel with respondents.

STATE OF NEW JERSEY:

I, Charles G. McChesney, secretary of state of the State of New Jersey, and ex officio clerk of the court of errors and appeals, do hereby certify, that the foregoing is a true copy of a decree made by said court at the term of January, A. D. 1847.

In testimony whereof I have hereunto set my hand and affixed my seal of office at Trenton, this first day of December, A. D. one thousand eight hundred and forty-seven.

[SEAL.]

CHARLES G. McCHESNEY, *Clerk*.

In the court of errors and appeals in the last resort in all causes of law.

Between JEREMIAH W. BLYDENBURGH and Juliana Blydenburgh, appellants, and HENRY COTHEAL and David Cotheal, respondents.

On bill, &c. Petition of appeal.

To the honorable the court of errors and appeals in the last resort in all causes of law.

The humble petition of Jeremiah W. Blydenburgh and Juliana Blydenburgh, the appellants in the above stated cause, respectfully shews: That your petitioners find themselves aggrieved by a final decree made in the court of chancery by his honor Oliver S. Halsted, chancellor of New Jersey, bearing date the day of September, in the year one thousand eight hundred and forty-five, wherein the said Jeremiah W. Blydenburgh and Juliana Blydenburgh were defendants, in this respect, to wit: that the said decree adjudges, that the bond and mortgage in suit were valid and subsisting instruments, and binding upon the maker, and the land described in said mortgage; and your petitioners humbly appeal from the whole decree of the chancellor, which decrees as aforesaid, upon the ground that the said bond and mortgage are usurious and utterly void, and not an incumbrance upon the premises described in said mortgage. Your petitioners therefore pray, that the said decree of the chancellor may be reversed, set aside, and for nothing holden, and that your petitioners may have such relief in the premises as to this honorable court shall seem meet.

Dated the 21st day of October, 1845.

J. W. BLYDENBURGH,
JULIANA BLYDENBURGH.

STATE OF NEW JERSEY:

I, Charles G. McChesney, secretary of state of the State of New Jersey, and ex officio clerk of the court of errors and appeals, do hereby certify, that the foregoing is a true copy of the petition of appeal in the case of Blydenburgh and al., vs. Cotheal and al., as taken from and compared with the original on file in my office.

[SEAL.]

In testimony whereof I have hereunto set my hand and affixed my seal of office, at Trenton, this ninth day of December, A. D. one thousand eight hundred and forty-seven.

CHARLES G. McCHESNEY, *Clerk*.

SUPREME COURT OF THE UNITED STATES:

JEREMIAH W. BLYDENBURGH and Juliana Blydenburgh, plaintiffs in error,
vs.
HENRY COTHEAL and David Cotheal, defendants in error.

Assignment of errors.

The plaintiffs in error assign the following errors in the decision of the court of errors and appeals of the State of New Jersey:

First. The court erred in affirming the decree of the chancellor, who decided the bond and mortgage in suit to be a New York contract.

Second. The court erred in assuming, as the basis of their affirmance, the existence of a New York contract not in the record.

Third. The court erred in withholding from a citizen of New York the privileges and immunities of a citizen of New Jersey.

Fourth. The court erred in enforcing the law of the residence, instead of the law of the place of contract.

Fifth. The court erred in remitting the record to the chancellor in less than ten days after the rendition of their judgment.

The plaintiffs in error therefore pray, that the judgment of the court of errors and appeals of the State of New Jersey may, for these errors, be reversed, and that a mandate issue from the Supreme Court of the United States to the chancellor of the State of New Jersey, directing him to make his decree in conformity to the decision of this court; and they, as in duty bound, will ever pray.

JULIANA BLYDENBURGH,
JEREMIAH W. BLYDENBURGH,
Pro se.

By the honorable Samuel Nelson, an associate justice of the Supreme Court of the United States of America, to Henry Cotheal and David Cotheal:

Whereas Jeremiah W. Blydenburgh and Juliana Blydenburgh, lately issued out of the Supreme Court of the United States a writ of error, directed to the chancellor of the State of New Jersey, stating that, in the record and proceedings, as also in the rendition of the judgment of a plea in the court of errors and appeals, in the last resort in all causes of the State of New Jersey, between Jeremiah W. Blydenburgh and Juliana Blydenburgh, appellants, and Henry Cotheal and David Cotheal, respondents, a manifest error hath happened to the great damage of the said Jeremiah W. Blydenburgh and Juliana Blydenburgh; and that the record and proceedings aforesaid, and all things concerning the same, had been remitted to and were before the said chancellor.

And whereas, for the correction of that error in due manner, the said writ has been issued, returnable at the next stated Supreme Court of the United States, at the Capitol, in the city of Washington, on the first Monday of December next.

You are, therefore, hereby cited to appear before the said Supreme Court, at the city of Washington, on the said first Monday of December next, to do and receive what may appertain to justice to be done in the premises.

Given under my hand, at the city of New York, in the southern district of New York, in the second circuit, the first day of November, in the year of our Lord one thousand eight hundred and forty-seven, and of the independence of the United States the seventy-first.

S. NELSON,
Associate Justice Supreme Court U. S.

SUPREME COURT OF THE UNITED STATES:

JEREMIAH W. BLYDENBURGH and JULIANA BLYDENBURGH,
vs.
HENRY COTHEAL and DAVID COTHEAL.

STATE OF NEW YORK,
City and county of New York, ss:

C. N. Potter, of said city, being duly affirmed, [says] that, on the 4th day of November last he served on Henry Cotheal, above named, a copy of the above citation, by delivering to him personally such copy, and at the same time shewing him the original, above written, with the signature of the associate justice of said court thereto attached; and further says, that, on the 6th day of November last, he, the deponent, served personally on David Cotheal, above named, a copy of said citation, by delivering to him such copy and shewing him the original, above written, and the signature of the associate justice thereto attached.

C. N. POTTER.

Subscribed and affirmed, this 7th day of December, A. D. 1847, before me,

J. W. NELSON,
U. S. Commissioner.

UNITED STATES OF AMERICA, *ss:*

The President of the United States of America, to the chancellor of the State of New Jersey, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea, in the court of errors and appeals in the last resort in all causes, of the State of New Jersey, between Jeremiah W. Blydenburgh and Juliana Blydenburgh, appellants, and Henry Cotheal and David Cotheal, respondents, a manifest error hath happened, to the great damage of the said Jeremiah W. Blydenburgh and Juliana Blydenburgh, appellants, as is said; and because the record and proceed-

ings aforesaid, and all things concerning the same, have been remitted to you and are before you; we being willing that such error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the justices of the Supreme Court of the United States, at the Capitol, in the city of Washington, together with this writ; so that you have the same at the said place, before the justices aforesaid, on the first Monday of December next, that the record and proceedings aforesaid being inspected, the said justices of the Supreme Court may cause further to be done therein, to correct that error, what of right, and according to the law and custom of the United States, ought to be done.

Witness the honorable Roger B. Taney, chief justice of the Supreme Court of the United States, this first Monday of February, in the year of our Lord one thousand eight hundred and forty-seven, and of the independence of the United States the seventy-first.

ALEX. GARDINER,
Clerk of the circuit court of the U. S. for the southern district of New York, in the second circuit.

Filed , 1847.